Supreme Court, U.S.
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05-567

No. _____

In the
Supreme Court of the United States

DEBBIE MEDLEY,

Petitioner,

v.

LYNN MEERS, as Guardian for Leslie Meers,
JOEY ROGERS,

Respondents.

On Petition for a Writ of Certiorari to the Kentucky Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Are public school students with disabilities who make claims cognizable under the Individuals with Disabilities Education Act at liberty to circumvent the exhaustion requirement under the Act by making additional claims of "physical abuse" and invoking statutes or laws other than the Individuals with Disabilities Education Act?

RULE 14.1(b)STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner: Debbie Medley[1]

Respondents: Lynn Meers, as Guardian for Leslie Meers, and Joey Rogers

RULE 29.6 STATEMENT

Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

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[1] Other parties were Defendants in the trial court; however, those parties have not joined the Petitioner in this matter.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Debbie Medley (hereinafter "Medley"), respectfully petitions this Court for a writ of certiorari to review an order of the Supreme Court of Kentucky, which denied Medley's motion for discretionary review of the opinion of the Kentucky Court of Appeals, Case No. 2004-CA-001003-MR, entered on October 29, 2004. The Court of Appeals' opinion (which consolidated, for purposes of appeal, the separate complaints filed by the Respondents herein) reversed Shelby Circuit Court's order which had granted a motion to dismiss that was made by the petitioner against the respondents' several claims. The opinion of the Court of Appeals differs from opinions rendered in other federal and state courts concerning interpretation of the applicability of the exhaustion requirement of the Individuals with Disabilities Education Act.

OPINIONS BELOW

An unreported order of Shelby Circuit Court, entered on April 25, 2003 [Pet. App. at 14a-16a], granted the petitioner's motion to dismiss the respondents' claims. That order was appealed to the Kentucky Court of Appeals, and on October 29, 2004, the Kentucky Court of Appeals rendered its opinion [Pet. App. at 4a], reversing the circuit court's order. [Pet. App. at 11a]. That Kentucky Court of Appeals' opinion has been officially reported at 168 S.W.3d 406 (Ky. App. 2004). A petition for rehearing was timely submitted to the Court of Appeals and that petition was denied in an unreported order rendered on December 22, 2004. [Pet. App. at 2a]. The Supreme Court of Kentucky denied petitioner's motion for discretionary review in an unreported order dated August 17, 2005. [Pet. App. at 1a].

JURISDICTION

The certiorari jurisdiction of this Court is invoked in conformity with 28 U.S.C. 1254(1). The Kentucky Court of Appeals rendered its opinion on October 29, 2004, and subsequently denied Medley's petition for rehearing on December 22, 2004. Petitioner timely filed a Motion for Discretionary Review with the Supreme Court of Kentucky and it denied that motion on August 17, 2005. This Petition was then timely filed.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant provisions of the Individuals with Disabilities Education Act (hereinafter, "IDEA"), as amended, are set forth below:

1415. Procedural safeguards

(i) Administrative procedures

(2) Right to bring civil action

(A) In general

> Any party aggrieved by the findings and decision made under subsection (f) or (k) of this section who does not have the right to an appeal under subsection (g) of this section, and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(l) Rule of construction

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. §12101 et seq.], Title V of the Rehabilitation Act of 1973 [29 U.S.C. § 791 *et seq.*], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section **shall be exhausted** to the same extent as would be required had the action been brought under this subchapter. [Emphasis added.]

STATEMENT

Respondents, Lynn Meers and Joey Rogers, brought separate civil actions against Petitioner, Debbie Medley.

Lynn Meers, as guardian for Leslie Meers

Respondent, Lynn Meers, is the guardian of Leslie Meers (hereinafter, "Meers"), who was a special education student at Shelby County High School during the 2000-2001 school year. Leslie Meers suffers from autism.

Meers alleged in her complaint that the petitioner, Debbie Medley, berated, harassed, embarrassed, physically abused, and mentally abused, Leslie Meers. Further, Meers also alleged that the classroom setting was not a suitable environment for her child who was deprived of appropriate guidance and instructions with respect to her education. However, Meers made no complaint, and requested no due

process hearing, which was available to her pursuant to requirements found in the Individuals with Disabilities Education Act (hereinafter, "IDEA"), concerning these allegations, prior to filing the complaint in Shelby Circuit Court.

Leslie Meers had an individualized educational program (hereinafter "IEP"). Lynn Meers, as her guardian, was made aware of the due process rights that were available to her if she wanted to make a complaint about the free appropriate public education that Leslie was entitled to receive as a special education student eligible for related services.

Joey Rogers

Respondent, Joey Rogers (hereinafter, "Rogers"), was a special education student at Shelby County High School. He suffers from cerebral palsy.

Rogers alleged in his complaint that Medley berated, harassed, embarrassed, physically abused, and mentally abused him. Rogers also alleged that there was an unstable classroom environment, and that he was deprived of appropriate guidance and instructions with respect to his education. While Rogers contends that he complained to Debbie Medley, Jim Flynn, and to others, he did fail to pursue relief, or to exhaust the administrative remedies available to him, to address these allegations.

Rogers made no complaint, and requested no due process hearing, which was available to him pursuant to requirements found in the IDEA, concerning these allegations, prior to filing the complaint in Shelby Circuit Court.

Rogers had an IEP. Rogers and his parents were made aware of the due process rights that were available to him if he wanted to make a complaint about the free appropriate public education that he was entitled to receive as a special education student eligible for related services.

REASONS FOR GRANTING THE PETITION

1. THE MEERS & ROGERS OPINION BY THE KENTUCKY COURT OF APPEALS SUBSTANTIALLY MISCONCEIVED THE APPLICABILITY OF THE EXHAUSTION REQUIREMENT THAT IS CODIFIED IN THE IDEA.

The opinion at issue began its analysis by summarily stating that "[t]here are no claims asserted in the complaints under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400-1491) (West 2003 & Supp. 2004)." However, the court plainly ignored the acknowledgment made by respondents, in their complaint, that the alleged acts have educational consequences. The complaints of Meers and Rogers alleged, in relevant part:

- Negligence with respect to the monitoring and supervision "[i]n failing to monitor and in failing to provide supervision in instructional services to Medley while [Meers and Rogers were] in her class."

- That Meers and Rogers were aggrieved because they were "required to be in [Medley's] classroom."

- That there was an "unstable classroom environment[.]"

- Plaintiffs were "deprived of appropriate guidance and instructions in their education."

All of these allegations in the complaint address core claims under the IDEA or, in the very least, they are claims that could have been made and pursued under the administrative process available pursuant to the IDEA. Therefore, it is abundantly clear that Meers and Rogers did state claims cognizable under the IDEA.

Further, the court arbitrarily concluded that it did not "view Meers' and Rogers' allegations as encompassing 'general disciplinary practices.' Rather, we think the allegations asserted by Meers and Rogers are best described as allegations of physical and mental assault and/or abuse, which are not within the scope of the IDEA." *Meers v. Medley*, 168 S.W.3d 406, 410 (Ky. App. 2004). The appeals court sought guidance from *Stutts v. Eastern Kentucky University*, 307 F. Supp. 2d 853 (E.D.Ky. 2004), wherein the United States District Court for the Eastern District of Kentucky focused on the "nature of the wrongs" in deciding whether the plaintiff's claims implicated the exhaustion provision under the IDEA. *Id.* at 858.

In *Stutts*, S.S., who had been diagnosed with cerebral palsy, attention deficit hyperactivity disorder, dyslexia, pervasive development disorder, and post-traumatic stress syndrome, was a student at the Model Laboratory Middle School, which is operated by Eastern Kentucky University to train student teachers under the supervision of certified teachers. S.S. and his parents sued the university under the ADA, the Rehabilitation Act of 1973, deprivation of

constitutional rights of due process and equal protection under the Fifth and Fourteenth Amendment of the United States Constitution, discrimination in violation of 42 U.S.C. Section 1983, and tortious failure to protect S.S. from harassment, physical abuse, and discrimination and outrageous conduct under Kentucky law. *See id.* at 855. Plaintiffs alleged that S.S. was subject to abuse and harassment because of his disabilities, and that the school failed to stop such conduct, effectively depriving him of a "fair and equitable education." *Id.* at 855.

The district court dismissed all claims made because the plaintiffs had failed to exhaust administrative remedies under the IDEA, finding that Section 1415 of the IDEA "requires the exhaustion of administrative remedies, even when the plaintiffs do not rely on the IDEA as the source of their claims, if their claim is sufficiently related to 'free appropriate public education' to a disabled child under the IDEA." *Id.* at 857 (quoting *Covington v. Knox County School System*, 205 F.3d 912, 916 (6th Cir. 2000)).

A distinction was specifically drawn by the *Stutts* court between claims concerning general school discipline and those claims involving physical or sexual assault of students. *Stutts*, 307 F. Supp. 2d at 858. According to the *Stutts* court, claims involving general school discipline are subject to the IDEA exhaustion requirement, while those involving physical or sexual assault are not. *Id.*

In *Stutts*, it was also recognized that a determination must be made concerning "whether the actions alleged by the plaintiff may best be understood as part of how the Model School provides education, or whether they are the type of abusive ultra vires acts by teachers or school administrators that lie outside of the IDEA's scope." *Id.* Unpersuaded by

plaintiff's argument that the complaints concerned constitutional and statutory violations independent of the IDEA, the court concluded that most of the allegations arose from decisions made by defendants to discipline or not to discipline plaintiff, even though the plaintiff had framed those claims as involving physical or sexual assaults. *Id.*

Despite the apparent similarities between *Stutts* and the case under consideration, plaintiffs attempted to circumvent the IDEA's exhaustion requirements by alleging some "physical abuse."

The Kentucky Court of Appeals, in the case under consideration, focused exclusively on the terminology of "abuse" that respondents chose to utilize, and concluded that since Meers and Rogers were alleging physical and mental abuse, the exhaustion of administrative remedies requirement of the IDEA did not apply. Unlike *Stutts*, the Kentucky Court of Appeals made no effort to look to the "nature of the wrongs" and ignored respondents' allegations made in their claims clearly concerning the appropriateness of their education.

A special education student's entitlement under the IDEA to a free appropriate public education, also known as a "FAPE" in special education terminology, has fueled an overwhelming amount of litigation. A lot of attention is focused on excessive disciplinary measures, or inappropriate behavior management. Discipline of students with disabilities is, and will continue to be, a "hot" legal issue.

Here, the respondents have attempted to bypass IDEA's exhaustion requirement simply by drafting a complaint with language that merely avoids mentioning IDEA specifically. While it may be conceded that a hearing officer may not have

authority to grant all of the relief that was requested in respondents' demands in the case under consideration, the nature of the relief requested in these complaints does not excuse the respondents from exhausting administrative remedies concerning the FAPE violation complaints made.

In the case under consideration, if the correct procedure had been followed by the respondents, an administrative hearing would have addressed the complaint from an educational standpoint under the IDEA, determining first whether the alleged acts of misconduct were incorrect in light of accepted educational principles and in conformity with the IEPs and then, if so, a determination would have been made concerning the educational services that may be implemented to remedy those wrongs. Regardless of the outcome of the administrative hearing process, respondents would still have been permitted to pursue their other claims in court; however, only after these administrative processes had been exhausted.

2. THE MEERS & ROGERS DECISION CONFLICTS WITH THE FEDERAL COURTS THAT HAVE RULED ON SIMILAR ISSUES.

A number of federal circuit courts have been asked to address the issue of how to apply the exhaustion requirement under similar circumstances. The fundamental principle can be evidenced throughout these cases -- to bolster a sound public policy surrounding the IDEA, that courts should strictly enforce the Congressional intent and require plaintiffs to avail themselves of remedies available under the Act before they file suit. *See. e.g. Frazier v. Fairhaven School Committee*, 276 F.2d 52 (1st Cir. 2002) (holding that allowing plaintiffs to bypass the IDEA's administrative process en route to state or federal court is directly at odds with the method of the IDEA and will render the entire scheme of the

IDEA nugatory); *W. v. Tirozzi*, 832 F.2d 748 (2d Cir. 1987) (holding that "[w]hen parents choose to file suit under another law - and the suit could have been filed under the [IDEA] - they are first required to exhaust the [IDEA]'s remedies to the same extent as if the suit had been filed originally under the [IDEA]'s provision."); *Cudjoe v. Independent School Dist. No. 12*, 297 F.3d 1058 (10th Cir. 2002) (holding that claims whose genesis and manifestation are educational are redressible under the IDEA); *N.B. v. Alachua County School Bd.*, 84 F.3d 1376 (11th Cir. 1996) (holding that the very reason for the exhaustion requirement under the IDEA is to prevent deliberate disregard and circumvention of agency procedures established by Congress).

The following cases deserve a much closer analysis. One case particularly instructive on this point is *Franklin v. Frid*, 7 F. Supp. 2d 920, 925 (W.D.Mich. 1998), a case that has been cited by a line of federal circuit courts. Similar to the case under consideration, the Franklins characterized the teacher's behavior as "physically and verbally abusive." *Id.* at 925. They contended that their claims did not concern the adequacy of IEP and that they were, therefore, not required to exhaust the administrative processes available to them under the IDEA. *Id.* The United States District Court for the Western District of Michigan rejected that contention and concluded that the Franklins' complaint about Frid dealt with acts that have both an educational source and an adverse educational consequence, even though their claims may have included elements of alleged physical and mental abuse. *Id.*

The Seventh Circuit has also considered the exhaustion requirement. In *Charlie F. v. Board of Educ. of Stokey School Dist. 68*, 98 F.3d 989 (7th Cir. 1996), Charlie's parents brought suit against Charlie's teacher, the school's principal, the school district's superintendent and the school

district itself under 42 U.S.C. 1983, the Rehabilitation Act, 29 U.S.C. 794, the American with Disabilities Act, 42 U.S.C. 12101-12213, and state law claims for money damages. They chose not to file a cause of action under the IDEA. The gist of their complaint was that when Charlie was in the fourth grade, his teacher invited her pupils to vent their feelings about Charlie's disabilities. According to Charlie's parents, the teacher repeatedly invited her students to express their complaints about Charlie, and they "ail too willingly obliged, leading to humiliation, fistfights, mistrust, loss of confidence, and self-esteem, and disruption of Charlie's educational progress." *Id.* at 990. The defendants, in response to the complaint, moved to dismiss on the ground that Charlie had not exhausted the administrative remedies available to him under the IDEA, even thought Charlie had not invoked that statute as a basis for his complaint. *Id.* at 991. The Seventh Circuit concluded that if both the genesis and the manifestations of the problem which forms the basis of the complaint are educational, the IDEA's administrative exhaustion requirement may be activated even if the plaintiff wants a form of relief that the IDEA does not supply. The case was remanded with instructions to dismiss the complaint for failure to utilize the IDEA's administrative remedies.

Covington v. Knox County School System, 205 F.3d 912 (6th Cir. 2000) the Sixth Circuit rejected the plaintiff-mother's argument -- that her claim was "an independent constitutional violation" which did not fall under the IDEA. In spite of that argument, the Sixth Circuit concluded that the IDEA explicitly requires exhaustion of administrative remedies, "even where the plaintiffs do not rely exclusively on the IDEA as the source of their claims." *Id.* at 915-16 (discussing *Doe v. Smith*, 879 F.2d 1343 (6th Cir. 1989); *Crocker v. Tenn. Secondary School Athletic Ass'n.*, , 873 F.2d 933 (6th Cir. 1989); *Honig v. Doe*, 484 U.S. 305 (1988); and citing

the IDEA: that "the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.")

The *Meers & Rogers'* decision also conflicts with the Ninth Circuit's holding in *Witte v. Clark County School District*, 197 F.3d 1271 (9th Cir. 1999). The plaintiff in *Witte* was a child with disabilities and he had his own IEP pursuant to the IDEA. *Id.* at 1272. Due to his disabilities, plaintiff made noise in the classroom, was unable to run fast enough, unable to stay on task or cut his food, and made involuntary body movements. *Id.* at 1273. As punishments, plaintiff endured extensive physical and emotional abuse by his teachers. *Id.* For instance, he was forced to stand outside on the patio without food or water for an extended period of time and he was forced to eat oatmeal even though his mother had informed teachers that her son was allergic to oatmeal. *Id.* Plaintiff sued, seeking only monetary relief, both compensatory and punitive. *Id.* at 1274. His claims concerned alleged violations of Section 1983, the Rehabilitation Act and the ADA, along with tort claims under state laws. *Id.* at 1272. The Ninth Circuit held that the plaintiff was not required to go through administrative proceedings under the IDEA because (1) the plaintiff sought only monetary damages; and (2) all educational issues had already been resolved through the IEP process. *Id.* at 1275.

Two things distinguish *Witte* from the case under consideration. First, the plaintiff in *Witte* actually pursued administrative remedies. The court in *Witte* found that the mother "in fact ha[d] used administrative procedures to secure the remedies that [we]re available under the IDEA." *Id.* at 1276. Second, the court in *Witte* issued a thorough opinion explaining the limited breadth of the exception where

exhaustion is not required. The plaintiff was spared from exhausting all of the administrative remedies available because, among other things, "all educational issues already ha[d] been resolved to the parties' mutual satisfaction through the IEP process." *Id.* at 1275. His transfer to another educational facility "was facilitated through the IEP process," and "[t]he parties mutually agreed that [p]laintiff's new school would provide him an educational program and setting that were appropriate for his needs." *Id.* at 1274, n.1. The Ninth Circuit distinguished Charlie F. on this ground, reasoning that in *Charlie F.*, "there was no indication that the parties had mutually agreed - either through informal processes available under the IDEA or through its formal procedures - to the new placement and to future educational plans and services that would address the educational component of the aftermath of the humiliation." *Id.* at 1275-76 (discussing *Charlie F.*).

Conversely, the Kentucky Court of Appeals in *Meers & Rogers* arbitrarily concluded that the respondents' claims focused on physical and emotional assault/abuse, without looking to the substance of those claims made under the label of "physical abuse," and without looking to that portion of the complaints which did include core claims made under the IDEA. In fact, by eviscerating the exhaustion requirement, it robbed Kentucky's state and local agencies of the opportunity to even try to address those complaints.

The *Witte* court recognized that there is an appropriate time and place for filing a civil action under these circumstances. Unlike *Witte*, respondents in the case under consideration failed to give the local authorities a chance to remedy their problems before running to court.

3. THE MEERS & ROGERS DECISION CONFLICTS WITH THE ONLY PUBLISHED STATE COURT THAT HAS RULED ON SIMILAR ISSUES.

Massachusetts is the only other state court to consider the question that was brought forward in this matter. *See Kelly v. Framingham*, 36 Mass. App. Ct. 483 (1994). In that case, the Appeals Court of Massachusetts considered whether a tort action, brought by a child with learning disabilities and her parent, was barred by the plaintiffs' failure to exhaust their administrative remedies. The plaintiffs in *Kelly* alleged "negligence, intentional infliction of emotional distress, intentional interference with and advantageous relationship, and negligent misrepresentation, and [] that the defendants performed insufficient and inadequate evaluations of Kelly [] and that [the defendants] failed to provide her with an education suitable to a child with her special needs." *Id.* at 484.

The Court, citing to the IDEA, said that States must set forth "procedural requirements to protect the rights of children with disabilities[.]" *Id.* The Court also said that Massachusetts had a regulatory system to address complaints, in compliance with the requirements of the IDEA. *Id.* at 485. The Court affirmed the decision to bar the plaintiffs' claims, and also concluded "that damages for pain and suffering are not available to parents and children whose claims are, in essence, that they suffered harm because the child was denied his right to a free public education appropriate to his needs." *Id.* at 488-89. In doing so, the Court said that remedies available under the IDEA, and those remedies that were permitted by the Massachusetts Legislature, were limited and did not include a right to monetary damages. That Court, in support of the decision to limit damages to those remedies available under the IDEA and the Massachusetts regulatory system, said:

> Were courts to entertain claims such as the plaintiffs', the limited financial resources available to benefit children with special education needs could be diverted from the programs and services designed for their benefit and could harm the class of persons the legislation was intended to protect. *Id.* at 489.

4. THE DEPARTURE FROM THE EXPRESS REQUIREMENTS OF THE IDEA MADE BY THE KENTUCKY COURT OF APPEALS HIGHLIGHTS THE NEED FOR THIS COURT TO CLARIFY THE CRITERIA TO BE USED IN IMPLEMENTING THE IDEA'S FEDERAL MANDATE, REQUIRING EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE FILING CIVIL ACTIONS IN THE COURTS.

The *Meers & Rogers* holding is detrimental to the public school infrastructure in Kentucky, and a reasoned approach is necessary to safeguard the Congressional intent articulated in IDEA.

An undertaking as large as the implementation of the IDEA is dependent upon the adherence to the administrative scheme that accompanies it. The IDEA's administrative scheme evidences Congress' commitment to supporting that sound public policy. See 20 U.S.C. 1400 et. seq. Section 1415 of the IDEA, which specifies that plaintiffs must exhaust administrative procedures before filing a civil action. 20 U.S.C. 1415(a)-(k) (2000). The civil suit provision of the act is included only as a last resort, because Congress understood that intricate administrative procedures are required to make IDEA effective and fair.

Congress has made clear and, in fact, has reaffirmed several times, its intent that questions concerning the provision of a free appropriate public education to disabled children be discussed and resolved through a collaborative process and, if necessary, through alternative dispute resolution or administrative proceedings. In its latest amendments to the IDEA, Congress again made clear its intent that parents and schools should seek to resolve their differences informally and avoid adversarial proceedings, if at all possible. Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446 (2004). The new law, effective since July 1, 2005, requires, in addition to the opportunity for mediation, that the parents and relevant members of the IEP Team participate in a "resolution session" before a due process hearing can be held. 20 U.S.C. 1415(f)(1)(B). The amendment to 20 U.S.C. 1415(1) is a reaffirmation of the necessity of exhausting the IDEA's administrative procedures before seeking judicial relief on alternative theories.

Congress clearly required complainants, before they file civil actions in court, to exhaust the administrative remedies carefully laid out in the statute. Courts, which are without expertise in the education of children with disabilities, should decide cases arising under the IDEA only after they have received the benefits of a serious and thorough examination of the record by state and local educational agencies devoted to the purpose of educating such children. *See*.e.g., *Stauffer v. William Penn School District*, 829 F.Supp. 742, 748-49 (E.D.Pa. 1993) (citing and quoting *Crocker*, *supra*.) A decision by this Court, affirming this requirement, is necessary to preserve the integrity of the act and the purposes that it serves.

This plain legislative intent has previously been stated by this Court. In *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 207-08 (1982), this Court recognized that schools have the expertise to make the educational judgments about how best to provide FAPE and that courts should hesitate to interfere with those decisions. This Court in Hendrick interpreted the processes available to parents or guardians of disabled children as follows:

> Parents or guardians of handicapped children must be notified of any proposed change in the "identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such child," and must be permitted to bring a complaint about "any matter relating to" such evaluation and education. Complaints brought by parents or guardians must be resolved at "an impartial due process hearing," and appeal to the state educational agency must be provided if the initial hearing is held at the local or regional level. **Thereafter**, "[a]ny party aggrieved by the findings and decision" of the state administrative hearing has "the right to bring a civil action with respect to the complaint . . . in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. *Id.* at 182-83, n. 10, at 182-83 (Citations omitted) (Emphasis added).

These administrative processes help ensure that disputes between parents and schools are resolved expeditiously and that children with disabilities can receive FAPE as soon as possible without being subject to the inherent delays that accompany judicial proceedings. It also helps school districts, by focusing on the delivery of services that support the

educational interests of children, by identifying problems that can be corrected without incurring unnecessary costs, or forcing judicial intervention.

If the holding in *Meers & Rogers* is followed by other jurisdictions, school district and teachers sued for alleged "physical assault or abuse" must opt for one of the following:

1) defend on the merits in expensive and prolonged litigation; or

2) raise the exhaustion requirement jurisdictional defense in often long drawn out court battles subject to uneven and inconsistent judicial understanding and application of the defense.

Either way, significant amounts of public funding will be wasted, all to the detriment of students in American public school classrooms.

A favorable decision by this Court would establish a clear standard, which would minimize the amount of time and resources spent in attempting to resolve jurisdictional challenges and would refocus the proceedings - judicial or administrative - on whether the school district has properly met its obligation to provide FAPE to children with disabilities.

The analysis in *Meers & Rogers* would appear to indicate that as long as plaintiffs' claims are labeled as "physical or emotional abuse," and plaintiffs avoid mentioning the IDEA, then those plaintiffs would not be required to exhaust administrative remedies. Such a holding is clearly contrary to the Act; therefore it frustrates the Congressional intent (that courts serve as a "last resort" in IDEA cases). The

conclusions reached by the Kentucky Court of Appeals elevates form over substance, and this cannot be permitted to stand.

The *Meers & Rogers* decision permits plaintiffs to sidestep Congress' carefully crafted administrative scheme by simply characterizing their complaints as "physical or emotional assault/abuse." A careful reading of the federal cases discussed above makes clear the conclusion that simply alleging a claim of abuse should not be the key to opening the courthouse door in cases involving FAPE.

As more courts are confronted with cases in which plaintiffs label their claims as "abuse" instead of specifically stating that claims are being made under IDEA, it is crucial that these courts know how to determine jurisdiction when the plaintiffs have not first sought administrative relief. This Court's ruling on this question would provide the certainty that courts, students, teachers, and school districts, need, and would decrease the amount of money spent on interpreting the exhaustion requirement. This would reduce the number of cases in which premature intervention by the courts would be required.

The opinions at issue deprived Kentucky state and local educational agencies of the opportunity to apply the expertise available for carrying out its functions. By implying that a student may circumvent the administrative scheme that is mandated under 20 U.S.C. §1415 of the Act by filing a claim under other laws, the court nullified the State's power to consider questions about the provision of a FAPE.

If permitted to stand, the Kentucky opinion sends a message to overeager plaintiffs that there is a clear path available to circumvent the administrative procedures upon

which the IDEA relies. If the courts do not permit the school districts to address FAPE complaints under the mandated scheme, significant public funds will be expended without cause.

CONCLUSION

For the reasons stated herein, a writ of certiorari should be granted to rectify the Kentucky Court of Appeal's departure from the mandates of Congress and the decisions of other jurisdictions. The IDEA has noble purposes and has operated to the benefit of many special needs students since its inception.

However, if the opinion of the Kentucky Court of Appeals is followed by other courts, more plaintiffs will simply bypass the exhaustion requirements found in the act. Consequently, states and localities will be forced into frequent and expensive litigation, which will put a strain on the public coffers.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF KENTUCKY

2003-CA-001003-MR & 2003-CA-001008-MR

[August 17, 2005]

Lynn Meers, as Guardian for Leslie Meers, Joey Rogers,	)
v.	)
Debbie Medley	)

OPINION

Motion for discretionary review denied.

APPENDIX B

COURT OF APPEALS OF KENTUCKY

NO. 2003-CA-001003-MR; NO. 2003-CA-001008-MR

[December 22, 2004]

LYNN MEERS, AS GUARDIAN FOR LESLIE MEERS, APPELLANT,

v.

DEBBIE MEDLEY; JIM FLYNN, MARY COMER; AND LEON MOONEYHAN, APPELLEES,

AND

JOEY ROGERS, APPELLANT

v.

DEBBIE MEDLEY; JIM FLYNN, MARY COMER; AND LEON MOONEYHAN, APPELLEES

OPINION

Petition for Rehearing Denied.

APPENDIX C

COURT OF APPEALS OF KENTUCKY

NO. 2003-CA-001003-MR; NO. 2003-CA-001008-MR

[October 29, 2004]

LYNN MEERS, AS GUARDIAN FOR LESLIE MEERS, APPELLANT,

v.

DEBBIE MEDLEY; JIM FLYNN, MARY COMER; AND LEON MOONEYHAN, APPELLEES,

AND

JOEY ROGERS, APPELLANT

v.

DEBBIE MEDLEY; JIM FLYNN, MARY COMER; AND LEON MOONEYHAN, APPELLEES

OPINION

TAYLOR, JUDGE: Lynn Meers brings Appeal No. 2003-CA-001003-MR from an April 25, 2003, Order of the Shelby Circuit Court. Joey Rogers brings Appeal No. 2003-CA-001008-MR from an April 25, 2003, Order of the Shelby Circuit Court. We reverse and remand both appeals.

Meers and Rogers were students at Shelby County High School. Both suffer from severe disabilities and were placed into the special education program at the high school. On February 7, 2002, Meers and Rogers filed complaints in the Shelby Circuit Court, alleging that their teacher, Debbie Medley, physically and mentally abused them. Specifically, it was further alleged that both Meers and Rogers were "berated, harassed, embarrassed, abused physically and mentally by Medley."

Meers and Rogers also claimed that Jim Flynn (Principal of Shelby County High School), Mary Comer (Special Education Coordinator), and Leon Mooneyhan (Superintendent) (collectively referred to as appellees) "acted negligently, recklessly and/or grossly negligently" by failing to remove Medley as a teacher, by failing to monitor Medley, by failing to act on complaints about Medley, and by failing to enforce school policies. Each defendant/appellee was named in his/her individual capacity only.

Meers and Rogers claimed relief under 42 U.S.C.A. § 1983 (West 2003 & Supp. 2004), Kentucky Revised Statutes Chapter 344 (the Civil Rights Act), the torts of intentional infliction of emotional distress, assault, battery, negligence, and defamation. There are no claims asserted in the complaints under the Individuals With Disabilities Education

Act (IDEA) (20 U.S.C.A. § 1400-1491o (West 2003 & Supp. 2004).

Appellees filed motions to dismiss in each case for lack of subject matter jurisdiction (Ky. R. Civ. P. (CR) 12.02), claiming Meers and Rogers failed to exhaust administrative remedies as required by the IDEA. The court dismissed the actions. These appeals follow.

In dismissing Meers' and Rogers' actions, the circuit court merely stated "upon motion being made, and the Court being sufficiently advised, IT IS HEREBY ORDERED that this action be DISMISSED with prejudice." No grounds are stated for dismissal nor can we determine what part of the record, if any, was considered by the court in this ruling. As there exists interrogatory answers, verified responses, and other documents filed in the record, we assume the circuit court considered same and, thus, view the orders dismissing the actions as summary judgments. *See Ferguson v. Oates, Ky.*, 314 S.W.2d 518 (1958).

Summary judgment is proper where there exists no issue of material fact and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc., Ky.*, 807 S.W.2d 476 (1991).

Resolution of both appeals centers upon a singular issue - whether Meers and Rogers were required to exhaust administrative remedies under the IDEA. For the reasons hereinafter stated, we are of the opinion the IDEA is inapplicable; thus, the circuit court improperly dismissed the actions.

The specified stated purposes of the IDEA are:

> (1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;
> (B) to ensure that the rights of children with disabilities and parents of such children are protected; and
>
> (C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;
>
> (2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
>
> (3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
>
> (4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

20 U.S.C.A. § 1400(d) (West 2000 & Supp. 2004).

At issue in these appeals is the exhaustion of administrative remedies provision found in the IDEA, which reads as follows:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. § 791 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 U.S.C.A. § 1415(l) (West 2000 & Supp. 2004). Under the above exhaustion provision, an individual is required to exhaust administrative remedies before bringing a judicial action to obtain relief under the IDEA or before bringing a judicial action to obtain relief that is also available under the IDEA. The Courts have not been consistent in interpreting the exhaustion of remedies provision of the IDEA. In *Covington v. Knox County School System*, 205 F.3d 912, 915-916 (6th Cir. 2000), it was specifically observed that courts have given the provision varied interpretations:

> We note that some courts have interpreted § 1415 to require the exhaustion of administrative remedies even when the plaintiffs do not rely exclusively on the IDEA as the source of their claims. For example, several courts have held that exhaustion is required when plaintiffs bring § 1983 suits based on violations of the IDEA. *See, e.g., N.B. v. Alachua*

County Sch. Bd., 84 F.3d 1376, 1379 (11th Cir.1996), *cert. denied*, 519 U.S. 1092, 117 S. Ct. 769, 136 L. Ed. 2d 715 (1997); *Mrs. W. v. Tirozzi*, 832 F.2d 748, 756 (2d Cir.1987); *W.L.G. v. Houston County Bd. of Educ.*, 975 F. Supp. 1317, 1328 (M.D.Ala.1997). Additionally, some courts have held that whenever a claim falls within the purview of the IDEA--that is, whenever it relates to the provision of a "free appropriate public education" to a disabled child exhaustion is required, whether or not the plaintiff characterizes the claim as one arising under the IDEA.

In the case sub judice, we are persuaded by the reasoning contained in *Stutts v. Eastern Kentucky University*, 307 F. Supp. 2d 853, 857-858 (E.D.Ky. 2004) and adopt its interpretation of the exhaustion of remedies provision:

In determining whether relief is available under the IDEA where claims are brought pursuant to other statutes, courts have looked to the nature of the wrongs alleged. Complaints concerning the general disciplinary practices of a school district have been understood to relate to the way that the district provides education and "thus necessarily come within the scope of the IDEA." *Covington*, 205 F.3d at 916 (citing *Hayes*, 877 F.2d at 812- 13; *Moore v. Harriman City Schools*, 1994 U.S. App. LEXIS 1249, No. 92-5572, 1994 WL 18021, at 1 (6th Cir.Jan.21, 1994); *Waterman*, 739 F. Supp. at 365; *Pullen v. Botetourt County Sch. Bd.*, 1995 U.S. Dist. LEXIS 8522, No. 94-686-R 1995 WL 738983, at 4 (W.D.Va. Feb. 13, 1995)). By contrast, allegations of physical assault or sexual abuse of a student by a school staff member or administrator would fall outside of the scope of the IDEA since they are not related to the way that a school provides education. (footnote omitted).

Under this interpretation of the exhaustion provision, allegations relating to school discipline are deemed as claims available under the IDEA and are subject to the exhaustion of administrative remedies requirement of the IDEA. By contrast, allegations relating to physical assault or abuse are deemed as claims outside the scope of the IDEA and are not subject to the exhaustion of administrative remedies requirement.

In the case at hand, Meers and Rogers specifically claim:

> Medley verbally threatened and harassed Joey throughout the school year. She humiliated him by telling his [sic] he ate like an animal. Medley repeatedly and abusively berated Joey for his inability to stop drooling. She threatened him with a balled fist if he could not or did not do what she told him to do. Medley also physically abused him and treated him roughly under the guise of assisting him. Joey was also greatly distress [sic] as he witnessed Medley physically and mentally abuse other students in the FMD [Functional Mental Disabilities] class on a daily basis and he was forced to withstand the hostile classroom environment. . . .

Leslie was also subject to Medley's daily verbal and physical abuse at least as far back as August 2000 and until March 2001 when Medley was (temporarily) removed from the classroom. Leslie was harassed, verbally assaulted and humiliated by Medley. Medley also repeatedly used abusive and unnecessary physical restraint with Leslie, stepping on Leslie's hair, pinching her buttocks and bending her fingers back among other things. Leslie has also come home from

school with scratches and red marks on her after her mother and guardian, Lynn Meers, complained to the school of Leslie's treatment at the High School.

Appellant's Brief at 9-10.

We do not view Meers' and Rogers' allegations as encompassing "general disciplinary practices." Rather, we think the allegations asserted by Meers and Rogers are best described as allegations of physical and mental assault and/or abuse, which are not within the scope of the IDEA. Our decision is further supported by the report of the Cabinet for Families and Children. This report substantiated that adult "abuse" had occurred by Medley against students in her classroom.[1]

Accordingly, we are of the opinion that Meers' and Rogers' claims are not within the scope of the IDEA and, thus, exhaustion of administrative remedies under the IDEA is not required. As such, we conclude the circuit court erroneously entered summary judgments dismissing Meers' and Rogers' actions.

For the foregoing reasons, the orders of the Shelby Circuit Court are reversed and these causes are remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

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[1] Additionally, even if the Individuals With Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400-1491o (West 2003 & Supp. 2004)) were applicable, we harbor grave doubt as to whether Meers' and Rogers' civil rights claims under Kentucky Revised Statutes Chapter 344 would be subject to the exhaustion of remedies requirement of the IDEA.

APPENDIX D

SHELBY CIRCUIT COURT

[Filed April 25, 2003]

No. 02-CI-00076

JOEY ROGERS,	)
Plaintiff,	)
	)
v.	)
	)
DEBBIE MEDLEY, JIM FLYNN,	)
MARY COMER,	)
LEON MOONEYHAN,	)
Defendants.	)
	)

ORDER

Upon motion being made, and the Court being sufficiently advised, IT IS HEREBY ORDERED that this action be DISMISSED with prejudice.

There being no just cause for delay, this is a final and appealable order.

/s/_____
JUDGE, SHELBY CIRCUIT COURT
4/24/03

F. Larkin Fore
John Frith Stewart
John McNeil
John Fogle

SHELBY CIRCUIT COURT

[Filed April 25, 2003]

No. 02-CI-000767

LYNN MEERS, as Guardian for Leslie Meers, Plaintiff,	)
v.	)
DEBBIE MEDLEY, JIM FLYNN, MARY COMER, LEON MOONEYHAN, Defendants.	)

ORDER

Upon motion being made, and the Court being sufficiently advised, IT IS HEREBY ORDERED that this action be DISMISSED with prejudice.

There being no just cause for delay, this is a final and appealable order.

/s/_____
JUDGE, SHELBY CIRCUIT COURT
4/24/03

John Fogle
Juliette House
Jonathan McCarrick
John McNeil